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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 OSSIE LEE SLAUGHTER,

8 Plaintiff,

9 v.

10 STEVE FLEENOR, et al.,

11 Defendants.

NO: 4:17-CV-05128-TOR

ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING
LEAVE TO PROCEED *IN FORMA*
PAUPERIS, DISMISSING ACTION
FOR FAILURE TO PAY FILING FEE
AND DENYING PENDING
MOTIONS AS MOOT

12 BEFORE THE COURT is Magistrate Judge Rodgers' Report and
13 Recommendation to deny Plaintiff leave to proceed *in forma pauperis* pursuant to
14 28 U.S.C. § 1915(g), to dismiss this action for failure to pay the filing fee under 28
15 U.S.C. § 1914, and to deny all pending motions as moot, ECF No. 18. Plaintiff, a
16 prisoner at the Clallam Bay Corrections Center, filed timely objections. ECF No.
17 20.

18 Plaintiff again challenges the finding that three or more of his prior actions or
19 appeals were dismissed as frivolous, malicious, or for failure to state a claim upon
20

1 which relief may be granted¹. He asserts that cause number 2:11-cv-00430-LRS,
2 *Slaughter v. Sinclair, et al.*, was improperly dismissed and that the judge was biased.

3 Plaintiff appealed that dismissal to the Ninth Circuit Court of Appeals, *see* 12-
4 35686, and the appeal was found to be frivolous. When he did not pay the filing fee,
5 the Mandate was issued and the appeal was dismissed on December 17, 2012. The
6 decision of the Ninth Circuit Court of Appeals counted as a “strike.” *See Richey v.*
7 *Dahne*, 807 F.3d 1202, 1208 (9th Cir. 2015) (appellate court’s denial of IFP because
8 the appeal is frivolous counts as a “strike” even though the court does not dismiss
9 the appeal until later, after appellant fails to pay the filing fee). Because Plaintiff
10 availed himself of the opportunity to contest the dismissal of 2:11-cv-00430-LRS,
11 he may not do so again in the present action.

12 The Honorable Lonny R. Suko denied Plaintiff leave to proceed *in forma*
13 *pauperis* in cause number 4:16-cv-05109-LRS, *Slaughter v. Uttecht et al.* Plaintiff

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15 ¹These “strikes” include: (1) 2:05-cv-01690-JCC, *Slaughter v. King County Jail, et*
16 *al.*, dismissed for failure to state a claim; (2) 2:11-cv-00430-LRS, *Slaughter v.*
17 *Sinclair, et al.*, dismissed for failure to state a claim; and (3) Ninth Circuit Court of
18 Appeals cause number 12-35686, November 8, 2012, “We deny appellant’s motion
19 to proceed in forma pauperis because we also find the appeal is frivolous. *See* 28
20 U.S.C. § 1915(a).”

1 appealed that decision. On December 26, 2017, the Ninth Circuit Court of Appeals
2 affirmed the decision, finding that Mr. Slaughter had filed three actions or appeals
3 that qualified as “strikes.” *See* 16-35947. The Mandate was issued on February 16,
4 2018.

5 Again, Plaintiff may not challenge the Ninth Circuit’s decision here. Based
6 on that decision, the Court rejects Plaintiff’s assertion that he does not have at least
7 three qualifying “strikes” under 28 U.S.C. § 1915(g).

8 An application of 28 U.S.C. § 1915(g) does not constitute an additional
9 “strike” and cause number 4:16-cv-05109-LRS was not counted as a “strike” against
10 Plaintiff. Rather, that case merely illustrated that Plaintiff had previously
11 accumulated three “strikes” which the Ninth Circuit confirmed. Plaintiff’s
12 objections are unavailing.

13 Furthermore, Plaintiff’s vague assertions of retaliation, manipulated housing
14 assignments, vindictive placement in Intensive Management Units, transfers which
15 separated him from his “evidence,” *see* ECF No. 20 at 4, and even his assertion that
16 he could have fallen down stairs, *id.*, at 7, do not make a plausible showing that
17 Plaintiff was under imminent danger of serious physical injury when he submitted
18 his complaint on August 23, 2017. *See Andrews v. Cervantes*, 493 F.3d 1047, 1055-
19 56 (9th Cir. 2007) (discussing imminent danger exception to three-strikes rule).
20 Therefore, Plaintiff may not proceed *in forma pauperis* in this action.

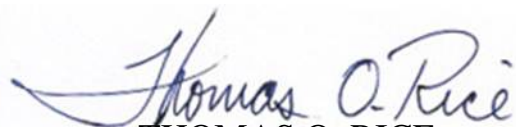
Accordingly, **IT IS HEREBY ORDERED:**

1. The Report and Recommendation, ECF No. 18, is **ADOPTED in its entirety**.
2. The application to proceed *in forma pauperis*, ECF No. 2, is **DENIED**.
3. This action is **DISMISSED without prejudice** for failure to pay the filing fee as required by 28 U.S.C. § 1914.
4. All pending motions are **DENIED as moot**.
5. The Court certifies that any appeal of this Order would not be taken in good faith.

IT IS SO ORDERED. The Clerk of Court is directed to enter this Order, enter judgment, provide copies to Plaintiff at his last known address, and **CLOSE** the file.

DATED March 29, 2018.




THOMAS O. RICE
Chief United States District Judge